

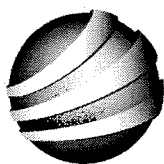
Exhibit A

In the Matter Of:
KING vs. EQUISTAR CHEMICALS

4:12-cv-00341

MATTHEW KING

October 03, 2012



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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MATTHEW KING)
)
vs.) CASE NO. 4:12-cv-00341
)
EQUISTAR CHEMICALS, L.P.,)
LYONDELLBASELL INDUSTRIES,)
N.V., a/k/a LYONDELBASELL,)
BENJAMIN FRANKLIN WITHERS,)
III, M.D., AND TAKE CARE)
HEALTH SYSTEMS)

ORAL VIDEOTAPED DEPOSITION

MATTHEW KING

October 3, 2012

ORAL VIDEOTAPED DEPOSITION OF MATTHEW KING,
produced as a witness at the instance of the
Defendant and duly sworn, was taken in the
above-styled and numbered cause on the 3rd day of
October, 2012, from 7:23 a.m. to 2:13 p.m., before
Shauna Foreman, Certified Shorthand Reporter in and
for the State of Texas, reported by computerized
stenotype machine at the offices of Peckham, PLLC,
800 Bering Drive, Suite 220, Houston, Texas, pursuant
to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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APPEARANCES

FOR PLAINTIFF:

CHARLES H. PECKHAM, ESQ.
PECKHAM, PLLC
800 Bering Drive
Suite 220
Houston, Texas 77057
Telephone: 713-574-9044
Fax: 713-493-2255
E-mail: cpeckham@peckhampllc.com

FOR EQUISTAR:

MARLENE C. WILLIAMS, ESQ.
ANITA BARKSDALE, ESQ.
JACKSON WALKER
1401 McKinney
Suite 1900
Houston, Texas 77010
Telephone: 713-752-4200
Fax: 713-752-4221
E-mail: mcwilliams@jw.com

FOR TAKE CARE HEALTH SYSTEMS AND DR. WITHERS:

VICTORIA M. PHIPPS, ESQ.
LITTLER MENDELSON
1301 McKinney
Suite 1900
Houston, Texas 77010
Telephone: 713-951-9400
Fax: 713-951-9212
E-mail: vphipps@littler.com

ALSO PRESENT:

Damon Norris, Videographer
Dr. Benjamin Withers
Keith Hopkins
Barbara Dunlap



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1 A. That's not -- okay.

2 Q. Did you ever do that for Marathon?

3 A. What I did was I separated out all the
4 maintenance performed tasks or reports and set them aside
5 for the maintenance department.

6 Q. Okay. So, you don't keep track of maintenance on
7 the equipment?

8 A. No, ma'am.

9 Q. Okay. All right. And then No. 4 says, "Field
10 visit using the associated P&ID to verify that the correct
11 piece of equipment is installed at the correct location
12 and tagged appropriately."

13 Do you -- is that something you do?

14 A. Yes, ma'am.

15 Q. Okay. And then he gives another example. He
16 says, "For relief valves, I take a picture of the name tag
17 and data plate and then compare that the information on
18 tag and data plate matches" -- and then he says -- "what
19 is documented in the equipment file."

20 So, he's just giving you an example there
21 of what he does, correct?

22 A. Yes, ma'am.

23 Q. All right. Then No. 5 is "Print the pictures and
24 insert in the equipment file."

25 Do you do that?



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1 A. What I do is I download the pictures into an
2 electronic form and I leave it into a database and then I
3 have another person put the pictures into the file for me.

4 Q. All right. Who does the -- do you have a
5 clerical person assisting you?

6 A. Yes.

7 Q. Okay. And what's the name of the clerical
8 person?

9 A. Anita.

10 Q. What's Anita's --

11 A. Don't ask me her last name. I'm sorry.

12 Q. So, does she assist you and the other
13 gentleman's -- I think you said his name was --

14 A. Charles Hardy.

15 Q. Charles, right. Does she assist both you and
16 Charles?

17 A. Yes.

18 Q. Anything on here -- anything not on here that's
19 one of your more important tasks?

20 MR. PECKHAM: Objection. Form. You can
21 answer.

22 A. One of my more important tasks?

23 Q. (By Ms. Phipps) Right. I just want to make
24 sure that we have a list of your important tasks.

25 MR. PECKHAM: Objection. Form. Sidebar.

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1 A. (Witness reviews the document.)

2 MR. PECKHAM: Objection. Form. You can
3 answer.

4 A. Yes, it is.

5 Q. (By Ms. Phipps) Okay. All right. Now, I
6 want to talk to you a bit about your medical
7 condition just a bit.

8 When did you first learn that you had
9 diabetes?

10 A. Early 20s.

11 Q. And how long have you been insulin dependent?

12 A. God, to my best -- in the range of 10 years.

13 Q. 10 years? Do you have to inject yourself with
14 insulin?

15 A. Yes.

16 Q. And I think you testified that you have dialysis
17 at the end of your workday three days a week?

18 A. Yes.

19 Q. All right. And typically how long does the
20 dialysis procedure last? How long does it take?

21 A. Three hours, 15 minutes.

22 Q. Are you currently in line for a kidney
23 transplant?

24 A. Yes, ma'am.

25 Q. Have you suffered any side effects from the

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1 Q. (By Ms. Phipps) Okay. I've handed you what's
2 been marked as Exhibit 10 to your deposition, which is --
3 appears to be your application to Equistar in 2003. When
4 you have a chance to look through it, when you get to the
5 last page, confirm that that's your signature and the
6 date.

7 A. Yes, ma'am, it is my signature.

8 Q. Okay. And you were hired to be a machinery
9 condition monitoring analyst; is that right?

10 A. Yes, ma'am.

11 Q. Is that the same thing as a vibration analyst?

12 A. Yes, ma'am.

13 Q. All right. So, that's the job you had at
14 Equistar the entire time you worked there?

15 A. Yes, ma'am.

16 Q. And before Equistar was Equistar, you worked at
17 Liondell, like, from 1998 to 2003?

18 A. Equistar was first, then we became Lion --
19 LyondellBasell -- Liondell, and then LyondellBasell.

20 Q. Okay. All right. So -- but when I refer to
21 Equistar, I'm referring to LyondellBasell, the whole group
22 of companies.

23 A. Yes.

24 Q. All right. And it's fair to say you never worked
25 for Take Care, one of the defendants in this case. You

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1 A. Prior to returning to work?

2 Q. Yes, sir.

3 A. Yes, I did.

4 Q. You interacted with Dr. Withers prior to
5 March 2010?

6 A. I can't remember the exact date that I talked to
7 him, but we talked one afternoon.

8 Q. Was this in regard to your returning to work?

9 A. Yes.

10 Q. Okay. So, I'm not talking about any incident
11 related to your return to work in 2010. Before -- before
12 this whole incident arose where you wanted to -- where you
13 had to leave work on FMLA leave for a few weeks and then
14 tried to return in 2010 -- I understand that you and
15 Dr. Withers interacted then. But prior to that did you go
16 see Dr. Withers because you had a cold or --

17 A. Oh, no. No, no.

18 Q. Okay. Did Mr. Withers ever tell you that he was
19 your supervisor?

20 A. No.

21 Q. At the medical facility -- what plant did you
22 work at for Equistar?

23 A. BCO.

24 Q. BCO?

25 A. Yes, ma'am.



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1 Q. -- October 26, '09. Do you see that?

2 A. Yes, ma'am.

3 Q. Yes? Okay. And then the return to work date
4 says 10/28/309. Does that say that on your --

5 A. No, ma'am. It says return to work date pending.

6 Q. Okay.

7 MR. PECKHAM: Do we have them swapped?

8 A. No, 13 --

9 MR. PECKHAM: 12 has the 10/28 date and 13
10 has pending.

11 Q. (By Ms. Phipps) Okay. So, we're looking at
12 12.

13 A. I see -- yes, ma'am.

14 Q. All right. And that is your signature in the
15 lower left corner?

16 A. Yes, ma'am.

17 Q. And it's actually dated 10/28/09. All right.
18 Now, as I understood it, you did take time off in October
19 related to your renal failure; is that right?

20 A. We -- what happened -- what happened here, I
21 believe, is when I filled out my -- my FMLA like this,
22 that I can remember, is Kimberly and I filled it out
23 early.

24 Q. Kimberly Stubbs?

25 A. Yes.



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1 Q. She was helping you fill out the paperwork?

2 A. Yes, ma'am.

3 Q. Okay. All right. And you filled -- and what was
4 this particular leave for?

5 A. Every -- she said -- Kimberly and I -- what she
6 said, we would just fill it out early for the -- for the
7 renal stuff.

8 Q. Okay. So, you went to see Kimberly at some
9 point?

10 A. Yes, ma'am.

11 Q. And you told her you needed to be out for
12 surgery?

13 A. I told Kimberly I was -- I filled it out early
14 because I was going in for renal failure.

15 Q. Was this when they were going to put the fistula
16 in?

17 A. This probably was when they were going to put
18 the -- no. 10/26/09.

19 Q. I'm going to hand you another --

20 MR. PECKHAM: Wait a second. I think he's
21 trying to think his way through the dates.

22 A. 10/26/09. I know we filled out -- the family
23 leave request out early. I know we did that because she
24 said, "Well, why wait? Let's do it now," and that's why
25 she filled it out and that's why I signed it. Now,



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1 because -- this wasn't for the fistula because I got my
2 fistula -- that was after the -- after the fact. I mean,
3 that was, you know -- I can't -- I don't know the exact
4 date when it -- I had my fistula put in.

5 Q. (By Ms. Phipps) Okay.

6 A. I mean, but that was -- that was after the Family
7 Leave Act.

8 Q. All right. Okay. Let me go back.

9 A. I mean, you're --

10 Q. Let me -- I'm going to do it this way. You've
11 been handed what's been marked as Exhibit 14 to your
12 deposition, which is a certificate to return to work.
13 It's from Dr. Khan.

14 Do you remember Dr. Khan?

15 A. Yes.

16 Q. And he was treating you for renal failure?

17 A. Yes, ma'am.

18 Q. And he says that you were under his care from
19 October 17th to October 21st, '09.

20 Do you see that?

21 A. Yes, ma'am.

22 Q. All right. So, you were out of work for that
23 period of time; is that right?

24 A. Yes, ma'am.

25 Q. All right. And he says you were able to return



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1 to work on 10/28/09.

2 Do you see that?

3 (Exhibit 14 marked)

4 A. Return to work on 10/28 of '09, yes.

5 Q. (By Ms. Phipps) Do you remember if you took FMLA
6 leave for this period of time you were off from
7 October 17th to October 21st?

8 A. I'm sorry. I don't remember.

9 Q. Okay. Exhibit 15 is a medical disposition form
10 which is dated October 28th of '09 which indicates you
11 can return to work without restrictions signed by Kimberly
12 Stubbs.

13 Do you see that?

14 A. Yes.

15 Q. Does this refresh your recollection at all as to
16 your being out on family medical leave in October of '09?

17 (Exhibit 15 marked)

18 A. No. I'm sorry. I cannot remember the dates.

19 Q. (By Ms. Phipps) Okay. Is it fair to say that
20 Kimberly Stubbs was helpful to you in applying for -- for
21 family medical leave?

22 MR. PECKHAM: Objection. Form. Go ahead.

23 A. Yes.

24 MR. PECKHAM: I'm sorry. What was your
25 answer?

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1 A. Yes.

2 MR. PECKHAM: Thank you.

3 Q. (By Ms. Phipps) When you -- was Kimberly the
4 only person you told that you needed to take family
5 leave, or did you also tell Keith Hopkins?

6 A. My main contact was Kimberly on Family Leave Act.
7 We filled out all the paperwork together.

8 Q. Did you tell your supervisor that you were going
9 to have to be gone for a few weeks for some kind of
10 medical procedure?

11 A. I would have to tell my supervisor any time I was
12 leaving, ma'am.

13 Q. Okay. All right. But sitting here today, you
14 don't actually recall that conversation. It was just your
15 general practice to do that?

16 A. Yes, ma'am.

17 Q. Did anyone at Equistar say anything negative to
18 you about taking family medical leave?

19 A. No, ma'am.

20 Q. Did anyone at Take Care say anything negative to
21 you about taking family medical leave?

22 MR. PECKHAM: I'm just going to object to
23 time frame.

24 Q. (By Ms. Phipps) Well, he said he only took
25 it once. So, I'm going to say during the entire time

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1 you worked at Equistar, did anyone at Take Care say
2 anything to you about taking family medical leave?

3 A. As far as I can remember, no.

4 Q. Okay. The entire time you worked at Equistar,
5 did anyone at Equistar say anything to you about taking
6 family medical leave?

7 A. No, ma'am.

8 (Exhibit 16 marked)

9 Q. (By Ms. Phipps) I've handed you what's been
10 marked as Exhibit 16 to your deposition, and it is the
11 medical certification form signed by one of your doctors
12 and also signed by you on the second page. If you would
13 just confirm for me that that's your signature on the
14 bottom of the second page.

15 A. Yes, ma'am.

16 Q. And it's dated February 17, 2010?

17 A. Yes, ma'am.

18 Q. All right. Do you know what -- what doctor
19 signed this?

20 A. No. I can't tell by his handwriting, no, ma'am.

21 Q. Okay. I can't either. But anyway --

22 MR. PECKHAM: I can tell you who it is.

23 MS. PHIPPS: Well, no, because you're not
24 testifying. Hold on.

25 Q. (By Ms. Phipps) Now, this says that you would be

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1 in the hospital in February 2010 to have dialysis catheter
2 placed to initiate dialysis, correct? Is that right?

3 A. Yes, ma'am.

4 Q. Okay. And that -- in Section 5 it says, "Patient
5 will return to work on March 15, 2010. Patient will
6 continue to" -- it says due, but "do dialysis three days a
7 week."

8 Do you see that?

9 A. Yes, ma'am.

10 Q. All right. All right. So, do you know if this
11 was provided to Kim Stubbs, Exhibit 16?

12 A. I don't know.

13 Q. All right. Did you -- you do recall going out on
14 family medical leave to have this dialysis catheter
15 placed?

16 A. Yes, ma'am.

17 Q. And was it this time, February 2010, that you
18 discovered that you were -- you were diagnosed with end
19 stage renal failure?

20 A. No.

21 Q. Okay. When were you diagnosed with end stage
22 renal failure?

23 A. When they told me, I was going -- it was a few
24 months beforehand.

25 Q. Before when?



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1 Q. All right.

2 A. Can I provide one --

3 MR. PECKHAM: Answer her questions.

4 A. Yes, ma'am. I mean, yes, sir.

5 Q. (By Ms. Phipps) Was there some episode that
6 triggered the analysis of your kidney? Did you have
7 some sort of sickness, ill -- sickness -- acute
8 sickness that caused you to have to go in for an
9 examination?

10 A. Yes, ma'am.

11 Q. What was that?

12 A. I started swelling.

13 Q. Your body?

14 A. My legs.

15 Q. Your legs started swelling? Okay. And that was
16 sometime, like, in 2009, the fall of 2009?

17 A. (Witness nods head affirmatively.)

18 Q. Is that a yes?

19 A. Yes, ma'am.

20 Q. Okay. All right. Now -- so, you go in, you have
21 the -- whatever surgery you're going to have, and do you
22 actually -- did you actually start dialysis while you were
23 out on FML -- family medical leave?

24 A. Yes.

25 Q. Okay. All right. And you -- we understand that



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1 you attempted to return to work -- return to work around
2 March 150th, 2010.

3 Does that sound right to you?

4 A. That sounds right to me, yes.

5 Q. Okay. What did you do in order to facilitate
6 your return to work? Who did you talk to at Liondell or
7 Take Care in order to come back to work?

8 A. Best I can remember is I had a return to work
9 slip. I had -- I believe I -- I believe I went to
10 Kimberly first and -- and -- and at that time things got a
11 little -- it was like, "Yes, you can. Here's my return to
12 work slip." And it was, "No, you cannot return to work."

13 Q. That's what Kimberly told you?

14 A. I believe it come down from somebody higher
15 above.

16 Q. Okay. So, you went to see Kimberly and you
17 handed her your return to work slip?

18 A. Uh-huh. (Witness nods head affirmatively.)

19 Q. Is that right?

20 A. I believe so.

21 Q. Okay. And then how was it -- how long was it
22 before you discovered that Kimberly was saying you
23 couldn't come back to work right then? Was that the same
24 day?

25 A. Same day.



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1 Q. All right. Did you talk to anyone at Equistar
2 about your return to work that same day?

3 A. No. I don't think I did. But if you have
4 something to document anything to refresh my memory, I
5 would be gladly --

6 Q. No, I don't. I was just going --

7 A. Because I -- I was -- that day was -- that was
8 just a bad day for me.

9 Q. Uh-huh. Well, was Kimberly mean to you?

10 A. No. It wasn't that she was mean. It was that I
11 was upset about them saying no.

12 Q. Okay. Did she tell you why you couldn't return
13 to work that day?

14 A. No.

15 Q. Okay. All right. So, what did you do after
16 Kimberly said you couldn't return to work? What did you
17 do about trying to get back to work after that?

18 A. Well, I requested to talk with Dr. Withers to
19 find out why.

20 Q. Okay.

21 A. Because I wanted to know the whole picture and --
22 go ahead. I'm sorry.

23 Q. Okay. Did Kimberly tell you Dr. Withers was
24 saying that you weren't approved to return to work yet?

25 A. I believe -- yes.



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1 there about kidney -- renal kidney failure, and that was
2 why -- this was my reason why you're not going -- going
3 back to work. The conversation went on to say that -- you
4 know, he looked at me and said, "Well, what would you do?"
5 And I kind of didn't know how to reply to him at the time.
6 I should have said, "Back to work." That's what I wanted.
7 I wanted to go back to work, you know. That's what I do.
8 That's what I've done all my life. I've worked.

9 Q. Okay. Did you talk to -- after you talked to
10 Dr. Withers, did you talk to anyone at Equistar about the
11 fact that you weren't being approved to return to work at
12 that time?

13 A. No. I left the building after that.

14 Q. All right. Did you ever contact Keith Hopkins or
15 anyone else -- HR at Equistar -- to find out if there was
16 more you could be doing?

17 A. I contacted -- yes, I -- I contacted people
18 before I talked to Dr. Withers.

19 Q. Okay. Who did you speak to?

20 A. I talked to -- I talked to an HR or HR department
21 or a head HR person because I wanted to talk to
22 Dr. Withers because I couldn't get in touch with him. I
23 was -- wanted to know why -- why, what, and everybody --

24 Q. Do you remember who you --

25 A. -- said no.



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1 to look at it page by page. The first page, it says you
2 report to the liability manager, correct?

3 A. Yes, ma'am.

4 Q. And was Keith Hopkins the reliability manager?

5 A. At this time, yes, ma'am.

6 Q. Okay. All right. And if you look at the job
7 tasks and frequency -- rather than read it all into the
8 record, I'll just have you look at it and tell me if you
9 agree with the job tasks, that these were job tasks that
10 you performed.

11 A. (Witness reviews the document.)

12 MR. PECKHAM: For clarification, are you
13 asking what's in all three of those boxes on that first
14 page or just that first box?

15 Q. (By Ms. Phipps) All three boxes under "job
16 tasks."

17 MR. PECKHAM: Got you. Thank you.

18 A. Yes, ma'am.

19 Q. (By Ms. Phipps) These were all job tasks
20 that you performed; is that right, sir?

21 A. Yes, ma'am.

22 Q. And then next to that there's a column that's
23 titled "frequency."

24 Do you agree with the frequency that's
25 listed associated with each of those tasks?

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1 A. I'm sorry. I'm reading out to myself.

2 Q. Did you hear my question?

3 A. Yes, ma'am, I heard your question. I -- I dis --
4 well, I disagree with "occasional."

5 Q. Okay. How would you describe it? Let's take the
6 first box.

7 A. The first box?

8 Q. Yes, where it says "Walking, climbing --
9 climbing, walking on elevator platforms, carrying tools,
10 grasping, reaching, maneuvering, and working in tight
11 places, repetitive hand/arm tasks, kneeling, squatting."

12 A. Every day.

13 Q. Every day? Okay. All right. The second box,
14 "Must be able to perform unit inspections of rotating
15 machinery systems to include, but would not be limited
16 to" -- again, climbing, manipulation of various hoses,
17 grasping, reaching at various heights, taking readings of
18 pressure, temperature, vibration. I'm not going to read
19 it all, but --

20 A. Right. Yes, ma'am. I -- this was almost an
21 everyday task.

22 Q. So, it would be more than occasional?

23 A. It would be more than occasional.

24 Q. Okay. Would you say if you worked -- did you-all
25 work 10-hour days or 8-hour days?



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1 A. 10-hour days. Four 10s.

2 Q. Would you spend at least five hours a day on the
3 items in the first block and --

4 MR. PECKHAM: Objection. Form.

5 A. I would say -- I'm trying to remember how long we
6 were out. Yes, I would say five hours. Yeah, five hours
7 a day easily.

8 Q. (By Ms. Phipps) Okay. And what about in the
9 second box which starts, "Must be able to perform
10 routine unit inspections"? How -- what -- how many
11 hours a day would you perform those tasks?

12 A. Well, it's performing vibration routes.
13 Vibration routes are every day.

14 Q. And how much -- what percentage of your day would
15 you spend on that?

16 A. Half a day or more. Depending on --

17 Q. Okay. So, that's five hours?

18 A. Yes, ma'am, depending on what's happening out in
19 the field. It could sometimes be up to a 16-hour day or
20 more.

21 Q. Okay. And then it says, "Must be able to perform
22 computer tasks to include e-mail correspondence."

23 How much of your day would you spend on
24 that?

25 A. Well, after every day I would come in, I would



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1 download. I could say, you know, four hours or more --
2 four or five. I mean, I would work it out where I can
3 work -- I do my routes, I download, which will take -- you
4 know, it could be four hours, three hours a day. And then
5 some -- and then the next day it could be -- when I'm
6 analyzing all the data and doing reports, it could be most
7 of the day.

8 Q. Okay. So, which of these -- strike that.

9 As I understand it, you were the only
10 condition monitoring analyst at the BCO facility?

11 A. Yes, ma'am.

12 Q. All right. So, does that mean you worked most of
13 the day alone?

14 A. Yes, ma'am.

15 Q. All righty. Would you have to work around hot
16 equipment --

17 A. Yes, ma'am.

18 Q. -- that could burn you if you touched it?

19 A. Yes, ma'am.

20 Q. Okay. Would you have to maneuver and work in
21 tight places?

22 A. Yes, ma'am.

23 Q. Would you typically get a break during the day?

24 A. Yes, ma'am.

25 Q. You would? How long a break would you get?



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1 A. We get three breaks a day.

2 Q. Three?

3 A. Yes, ma'am. We got one at 9:00, one at lunch,
4 and then around 2:00 o'clock or 3:00.

5 Q. Were the 9:00 and 3:00 o'clock breaks 15-minute
6 breaks?

7 A. 15-minute breaks.

8 Q. And how long did you get for lunch?

9 A. Half an hour.

10 Q. Okay. And you would have to be available after
11 hours for emergency response?

12 A. Yes, ma'am.

13 Q. Exactly what would you do in an emergency? What
14 would be your role?

15 A. Emergency response would mean any piece of
16 equipment that they thought had a problem, I would go out
17 there and analyze the problem for them.

18 Q. Oh, okay.

19 A. It would take anywhere from being there -- it
20 could be there 10 minutes finding out an operator didn't
21 start up a piece of equipment correctly and I would show
22 them how to start it up, or it could take all -- all day
23 or all night or the next day.

24 Q. How frequently would you actually have to go out
25 in these after-hour emergency responses?

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1 A. How frequently?

2 Q. Yes, sir.

3 A. I could say -- that's a very good question.

4 Q. More than once a week?

5 A. Maybe once a week, maybe -- and sometimes it
6 could be two or three times a night or a day. It's a
7 chemical plant is what I have to say to that. Whenever
8 they need me, that's when I come.

9 Q. And there was no backup for you?

10 A. I did have backups, but they were at other
11 facilities and I would have to call them and say, you
12 know, "Hey, I need help" or, "Hey, I've been out here all
13 night." And I could either call straight to them or -- I
14 didn't even have to go through Keith on that.

15 Q. Okay.

16 A. I just had to -- I would call up to La Porte and
17 say, "Hey, I need -- need you."

18 Q. Did you ever actually see the recommendation
19 Dr. Withers prepared for Equistar with regards to your
20 returning to your job?

21 A. Not until after -- way after we talked.

22 Q. Okay. You mean long after you and Dr. Withers
23 talked?

24 A. Yes. That was after they let me go.

25 Q. Okay. You mean you saw the restrictions after



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1 property, or could you have driven a golf cart?

2 A. I could have driven a golf cart.

3 Q. And then No. 4 is "no work around unguarded
4 rotating equipment." Now, you told me there was no
5 unguarded -- unguarded rotating equipment, correct?

6 A. Yes, ma'am.

7 Q. So, you could have complied with that
8 restriction?

9 A. I could have complied with it.

10 Q. Then No. 5, not to work more than 30 minutes
11 without a 15-minute break in a cool environment when the
12 heat index is 90 or higher.

13 Do you see that?

14 A. Yes, ma'am.

15 Q. Could you have complied with that restriction?

16 MR. PECKHAM: Objection. Form.

17 A. Yes, I could have complied with it. It would
18 have made my day longer, but I could have complied with
19 it.

20 Q. (By Ms. Phipps) Okay. No. 6, will not -- he was
21 recommending that you not be available for after-hours
22 emergency for a minimum of approximately 15 hours per
23 week.

24 Would that have been a problem for you?
25 Could you have complied with that restriction?

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1 MR. PECKHAM: And I'll object to the form.
2 Go ahead.

3 A. I have -- this is -- will not be available after
4 hours emergency response for a minimum of approximately 15
5 hours per week.

6 Q. (By Ms. Phipps) So, you would have 15 hours
7 per week where you weren't available.

8 A. I would have -- my -- nine hours, 45 minutes.

9 Q. I'm sorry?

10 A. Nine hours and 45 minutes I'm -- couldn't comply
11 with that. Nine hours is all I would be gone. I'm sorry.
12 Three hours -- three hours, 15 minutes in that chair,
13 three days a week. That's it.

14 Q. Oh, I see. So, you --

15 A. That's the only thing -- if I were to be called
16 in at that time during dialysis is the only thing they
17 would have to -- I'm sorry -- what is the word?

18 MR. PECKHAM: Accommodate.

19 A. Accommodate me for.

20 MR. PECKHAM: Sorry. It's the only time
21 I'll fill in the blank.

22 A. Thank you.

23 MS. PHIPPS: I'll remember that.

24 MR. PECKHAM: Don't hold me to it.

25 Q. (By Ms. Phipps) Is it your testimony that



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1 after dialysis you could have -- on the days you had
2 dialysis after you received the dialysis you could
3 return to work?

4 A. Yes, ma'am.

5 Q. Okay.

6 A. Can I -- well --

7 Q. So, the only restriction that you would have had
8 difficulty -- that would have been a difficulty for you
9 would be No. 1, which is not to work alone, correct?

10 A. The only reason I answered that is you asked me
11 that -- was there anybody else that would be there to help
12 you?

13 Q. Right.

14 A. And I didn't consider that a restriction. I
15 actually don't need anybody else to help me.

16 Q. I understand that's what you're saying, but the
17 restriction is that you not work alone. So, I'm asking
18 was there someone else who could have worked with you so
19 that you could have complied with this restriction?

20 A. At the facility at that time?

21 Q. Yes.

22 A. No.

23 Q. Okay.

24 A. But the way we worked at Liondell is I have
25 coverage through -- well, at the time I left was three

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1 actually be accommodated?

2 MR. PECKHAM: Objection. Form.

3 A. After the accommodations -- after I found out
4 what the restrictions were --

5 Q. (By Ms. Phipps) Well, let me stop you
6 because you said you didn't find out about the
7 restrictions until after you were terminated. I mean
8 before you were terminated did you ask anyone at
9 Lion -- at Equistar if these restrictions from
10 Dr. Withers could be accommodated?

11 A. Before?

12 Q. Yes.

13 A. I didn't even get the restrictions until after I
14 left.

15 Q. Okay. So, you never asked for an accommodation
16 from -- from Equistar?

17 MR. PECKHAM: Objection. Form.

18 Q. (By Ms. Phipps) Other than being let off for
19 dialysis.

20 A. I -- I still don't understand where you're going
21 with this question. I'm sorry.

22 Q. Let me ask you a question. I just need to know
23 whether you asked anyone at Equistar if the restrictions
24 which had been recommended by Dr. Withers --

25 MR. PECKHAM: That he didn't know about?



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1 A. Yes.

2 Q. What happened?

3 A. That I -- certain things are coming up.

4 Q. Okay.

5 A. I was told on the phone that it was due to my
6 health. That's what I was told on the phone.

7 Q. By Mr. Hopkins?

8 A. Yes.

9 Q. Okay. Sitting there today, do you know if Dr.
10 Withers recommended that you be terminated?

11 A. No, I didn't know Dr. Withers was -- no.

12 MR. PECKHAM: We've been going about an
13 hour, whenever you find a stopping place. I know you're
14 in a -- in a -- in a train here.

15 MS. PHIPPS: Give me just a couple minutes.

16 MR. PECKHAM: And we probably -- at the
17 next break, we probably need to take about 10 or 15
18 because Mr. King's stomach is rumbling almost as loud as
19 mine.

20 MS. PHIPPS: Is that Mr. King's stomach? I
21 thought it was mine. We can take a break, yeah.

22 VIDEOGRAPHER: Going off the record. It's
23 10:20 a.m.

24 (Recess from 10:20 a.m. to 10:37 a.m.)

25 VIDEOGRAPHER: We're now back on the

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1 record. It's 10:37 a.m.

2 Q. (By Ms. Phipps) Okay. Mr. King, before we
3 left for break we were talking about your -- about
4 the restrictions which had been recommended by
5 Dr. Withers. Before we left for break you testified
6 that you didn't know about those restrictions --
7 specific restrictions until after you had been
8 terminated.

9 Is that -- do you want to change any of
10 that testimony?

11 MR. PECKHAM: Objection. Form.

12 A. No, ma'am.

13 Q. (By Ms. Phipps) Okay. All right. We also
14 talked a bit about if you were performing your job --
15 well, let's say it like this.

16 When you were performing your job in the
17 field inspecting rotating equipment at Equistar --

18 A. Yes, ma'am.

19 Q. -- would there be any certain operational people
20 that you usually saw throughout the day, any specific
21 people?

22 A. I would see -- I would see each operator of each
23 unit.

24 Q. You would see the operator of each unit?

25 A. Yes, ma'am.



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1 that happen.

2 MS. PHIPPS: I'm not arguing. He's giving
3 me answers that I need to respond to, and that's what I'm
4 doing.

5 MR. PECKHAM: All right. Then don't
6 misrepresent what he says.

7 MS. PHIPPS: So, let's go back to the
8 beginning -- well, he just has to remember what he said.

9 MR. PECKHAM: Yes, that's exactly right,
10 and so do you if you're going to ask questions about it.

11 MS. PHIPPS: I think the record will be
12 clear.

13 MR. PECKHAM: All right.

14 Q. (By Ms. Phipps) Let's move on, Mr. King.
15 You testified that you didn't see the restrictions
16 from Dr. King -- from Dr. Withers -- excuse me --
17 until after you had been terminated, correct?

18 A. Yes, ma'am.

19 Q. And you can't exactly remember when that was,
20 when you actually saw the restrictions; is that right?

21 A. Yes, ma'am.

22 Q. All right. My question to you is: Did you
23 attempt to apply for work at Liondell in any other
24 position after you learned you were terminated?

25 A. Sorry. That just --



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1 MR. PECKHAM: Just answer her question,
2 Matt.

3 A. All right. No, ma'am.

4 Q. (By Ms. Phipps) All right. And why not?

5 A. Why not? Again, I was terminated. I couldn't
6 apply for any other positions.

7 Q. Okay. All right.

8 A. I was terminated because of my illness.

9 Q. Okay. Did you ask -- once you learned what the
10 restrictions were, did you contact Liondell to see -- or
11 Equistar to see if those restrictions could be
12 accommodated in some new position?

13 A. No, ma'am. Once they said I was terminated, that
14 was it.

15 Q. Sitting here today, do you know if Dr. Withers
16 made any decisions about whether your restrictions could
17 be accommodated?

18 A. Say that again one more time, please. I'm sorry.

19 Q. Do you know if Dr. Withers made any restrictions
20 about whether -- I'm sorry.

21 Do you know if Dr. Withers made any
22 recommendations to the people at Equistar about whether
23 your restrictions could be accommodated, the restrictions
24 that he had recommended?

25 MR. PECKHAM: That's as he sits here today?



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1 Q. Okay. And because he didn't, you believe that
2 his recommendations were unfounded?

3 MR. PECKHAM: Objection. Form. You can
4 answer.

5 A. To my knowledge, yes.

6 Q. (By Ms. Phipps) All right. Do you believe
7 Dr. Withers was trying to interfere with your -- the
8 exercise of your right to take FMLA leave?

9 MR. PECKHAM: Objection. Form.

10 A. He didn't -- say it one more time.

11 Q. (By Ms. Phipps) Do you know -- well, do you
12 believe that Dr. Withers interfered with your right
13 to take FMLA leave?

14 MR. PECKHAM: Same objection. You can
15 answer.

16 A. He -- I mean, I got to take my FMLA leave.

17 Q. (By Ms. Phipps) All right. Do you believe
18 he was retaliating against you -- retaliating against
19 you for taking FMLA leave by writing those
20 recommended restrictions?

21 MR. PECKHAM: Object to form.

22 A. Again, I got to take my FMLA leave.

23 Q. (By Ms. Phipps) Right.

24 A. What I think he did was he did -- in my best
25 knowledge, there was a retaliation.

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1 out, I'll be more than happy to oblige you.

2 Q. Okay. All right.

3 A. I need some help.

4 Q. All right. I'll keep on while I look for that.

5 So --

6 MR. PECKHAM: We'll stipulate if he
7 received it, he received it.

8 MS. PHIPPS: Okay. Right. I'll let you
9 look at this, and we can -- that's not critical for me to
10 prove it up right now, but that's what -- we'll be
11 producing that if we have to into evidence.

12 Q. (By Ms. Phipps) But -- so, you were -- you
13 were -- you don't remember -- I think I started down this
14 road, Mr. King --

15 A. Yes, ma'am.

16 Q. -- of asking if you were taking -- if you applied
17 for any job as a vibrations tech, and you said you applied
18 for any job because you were in danger of losing your
19 home; is that right?

20 A. Yes, ma'am.

21 Q. But you're not in danger of losing your home now?

22 A. No, ma'am.

23 Q. You applied for long-term disability benefits.

24 We discussed that a minute ago. Right?

25 A. Yes, ma'am.



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1 Q. Yes.

2 A. No.

3 Q. Okay. Okay. Back to your conversation with
4 Keith Hopkins in April of 2010. Okay. Your recollection
5 is that Keith Hopkins said to you that you were being
6 terminated because of your health; is that correct?

7 A. Yes.

8 Q. During that conversation, did he actually ever
9 discuss with you the fact that there had been restrictions
10 placed on you related to your return to work?

11 A. No, not at this time.

12 MS. WILLIAMS: Can we mark this one?

13 (Exhibit 21 marked)

14 Q. (By Ms. Williams) Mr. King, I will give you a few
15 minutes to look over that, but what's been marked as
16 Exhibit 21 is your amended charge of discrimination; is
17 that correct? Do you see that at the top?

18 A. Yes.

19 Q. Okay. Let me know when you're comfortable, when
20 you're ready to talk about it.

21 A. All right. Yes, ma'am.

22 Q. Okay. Is that your signature on the bottom of
23 the second page of Exhibit 21?

24 A. Yes, ma'am.

25 Q. It's dated June 22nd, 2010; is that correct?



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1 A. Yes, ma'am.

2 Q. I want to call your attention to the very first
3 paragraph of the second page. It's Roman Numeral V, and
4 I'm going to read it into the record. "On April 16th,
5 2010, I was told that I would not be able to return to
6 work by my supervisor. I was told that with the
7 restrictions given by Dr. Withers (which have to this day
8 not been told to me or my doctor) that he cannot allow me
9 to return to work."

10 Did I read that correctly?

11 A. Yes.

12 Q. Is it accurate, then, that on April 16th when
13 you -- well, let me clarify.

14 When you say "my supervisor," are you
15 referring to Keith Hopkins here?

16 A. Yes, ma'am.

17 Q. Okay. Is it accurate as reflected in your
18 amended charge that on April 16th Keith Hopkins told you
19 that there were restrictions given by Dr. Withers?

20 A. I see this.

21 Q. Is that accurate?

22 A. Yes, it is accurate to the best that I can
23 remember.

24 Q. Okay. So, on April 16th it is a fact that
25 Keith Hopkins told you that there had been restrictions

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1 placed on you affecting your ability to return to work and
2 that was the basis for the company's decision, correct?

3 A. Like I said, to the best of what I can
4 remember -- I just don't remember the part with Withers,
5 but --

6 Q. I mean, do you have any reason sitting here today
7 to dispute the statements that you made in your sworn
8 charge to the EEOC about what was said on April 16th?

9 A. No, I did not. No, I do not.

10 Q. Okay. And is it fair to say after reviewing the
11 charge that there's no reference in this charge at all to
12 any comments by Mr. Hopkins that you were told that you
13 couldn't return to work because of your health?

14 A. No, there is not.

15 Q. During your conversation with Mr. Hopkins on
16 April 16th did he recommend to you that you look for
17 other positions within the company?

18 A. No.

19 Q. Did you ask him about that?

20 A. About other positions?

21 Q. Yes.

22 A. No, ma'am.

23 Q. I want to go back and talk a little bit about
24 your job duties at Equistar.

25 A. Yes, ma'am.



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1 Q. And I think if you'll turn to Exhibit 17 --

2 A. Yes, ma'am.

3 Q. It's the job site analysis, correct?

4 A. Yes, ma'am.

5 Q. And I want to talk about the -- the specific task
6 that's identified in the first box, "must be able to
7 perform build and inspection of rotating equipment."

8 Can you describe in a little bit more
9 detail exactly what you were required to do with
10 inspecting field equipment or inspecting rotating
11 equipment in the field?

12 A. I took vibration readings on the equipment.

13 Q. Where was the equipment located?

14 A. In the unit.

15 Q. Okay.

16 A. In the plant.

17 Q. I got it, yeah. Was the equipment on the floor
18 or bottom level of the plant?

19 A. Yes, ma'am.

20 Q. Was there some equipment that was elevated?

21 A. Yes, ma'am.

22 Q. On the second -- let me finish.

23 MR. PECKHAM: Watch out, Matt.

24 Q. (By Ms. Williams) On the second level of the
25 plant?



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1 A. Finished?

2 Q. I am.

3 A. Yes, ma'am.

4 Q. Was there more than two levels of equipment at
5 the plant?

6 A. Yes, ma'am.

7 Q. Okay. How many levels of equipment was there?

8 A. Maybe three levels, fin fans.

9 Q. I'm sorry. The last part?

10 A. Three levels. I said fin fans. It's -- they are
11 the highest point of the plant where I would be taking
12 vibration readings.

13 Q. And how did you access the equipment that was on
14 the second level?

15 A. Stairs.

16 Q. And the equipment that's on the third level?

17 A. Stairs.

18 Q. Okay. Did you have a standard sort of operating
19 procedure for your -- your day with respect to your
20 inspection of the rotating equipment? For example, did
21 you start on the third level, work your way down, on the
22 first level, work your way up, anything like that?

23 A. I started on the bottom level -- started on the
24 bottom. Well, it's my route. I start on the bottom in
25 the yield plant and that's where our fin fans are at and I

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1 do half the bottom and then go up to the top, do fin fans
2 and then come back down and go back to the bottom and work
3 all the bottom, rest of the bottom of the plant.

4 Q. You mentioned earlier that there were -- that you
5 would see operators throughout your -- your day as you're
6 doing your inspections.

7 A. Uh-huh. (Witness nods head affirmatively.)

8 Q. Did you more often see them on the bottom level
9 as opposed to the second or third level?

10 A. Yes.

11 Q. Okay. Is it fair to say when you got to the
12 second level that there weren't any operators typically on
13 that level?

14 MR. PECKHAM: Objection. Form.

15 A. I would see them less on the upper levels.

16 Q. (By Ms. Williams) Okay. Okay. How long
17 would it take you to move -- and I'm excluding your
18 actual inspection activity.

19 When you're finished your inspection on the
20 first level and you're moving to the second level, how
21 long does it take you to get from the first level to the
22 second level?

23 A. A few minutes.

24 Q. Okay. What's a few?

25 A. To the second level?



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1 Q. Yes.

2 A. A good two minutes.

3 Q. Okay. And then --

4 A. Two, three -- yeah, two, three minutes at the
5 most.

6 Q. When you were accessing the third level from the
7 second level, how long did it take you to do that?

8 A. Another two, three minutes.

9 Q. Okay.

10 A. It's just a flight of stairs.

11 Q. Okay. I'm just trying to get a general sense of
12 what the environment was like. Between the -- or among
13 the first, second, and third level did you spend more time
14 typically on one level compared to the others, or was it
15 pretty much evenly split among the different levels?

16 A. Well, I would have to -- there's nothing at that
17 point -- there's nothing on the second level, so I went
18 straight to the third level, and I spent a lot of time on
19 the top level because I had rows of machinery that I had
20 to inspect.

21 Q. Okay. I'm sorry. You said at that point there
22 was nothing on the second level?

23 A. Nope. That's just still -- there's, like, a
24 second level, then there's a third level which is just
25 10 -- 10, 15 more feet above. So, I would just -- a



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1 quick -- quick jog up that ladder -- I mean the stairs.

2 Q. So, you actually didn't have any inspection work
3 to do on the second level?

4 A. Not on that unit.

5 Q. In another unit?

6 A. In the second unit I had a compressor called the
7 RGC, and that was on a second level.

8 Q. Okay.

9 A. And I was generally up there and I was taking
10 readings on it probably 15, 20 minutes.

11 Q. Okay.

12 A. And if I saw something wrong, it could take -- if
13 I had -- if I saw something wrong and I had to do a little
14 bit of an analysis up there, it could take a little bit
15 longer than that just depending on what I was looking for.

16 Q. And how many units did you actually inspect? You
17 divided it up into units. Right?

18 A. I did -- I did all the units.

19 Q. How many are there?

20 A. There's actually three -- three units.

21 Q. Okay. The second unit has equipment on the
22 first, second, and third levels; is that correct?

23 A. It has it on the first -- I'm trying to think if
24 there was a fin fan up there. The second unit, I think --
25 I believe there was just a bottom unit, just everything on

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1 the bottom.

2 Q. (By Ms. Williams) Okay. What about the
3 third unit?

4 A. I'm sorry. I'm -- I'm sorry if I'm mumbling.
5 I'm just trying to remember the units.

6 Q. Okay.

7 A. No, I think most of the upper was in the EL side.
8 And glycol, everything was -- in the first unit was -- I
9 think everything was on the bottom. I think everything
10 was -- just one unit, I believe, had all the fin fans.

11 Q. Okay. And those were on the very top level?

12 A. Very, very top level.

13 Q. Okay. Except for the second unit, then -- the
14 second unit did not have any equipment on the second
15 level, correct?

16 A. Hold on.

17 Q. Okay.

18 A. See, but -- vibration-wise, no. Oil-wise, yes
19 because I did oil stuff, too, for the unit. So -- and I
20 did -- whatever needed oiling. The fire monitors had oil
21 boxes on them that I had to drain and change and clean
22 when I was there, too.

23 Q. Okay. Let me make sure that I -- I just want to
24 make sure that I get the record clear. I appreciate your
25 efforts to remember. I know it's been a while.

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1 A. Yes, ma'am.

2 Q. The first unit that you worked on had equipment
3 on the first level and the third level, correct?

4 A. All right. You have glycol. You have another
5 unit. If you're walking out the front door of the unit,
6 you have one, two, three. The third unit has all the fin
7 fans.

8 Q. And that's on every level, or is that just on the
9 top level?

10 A. Just the top level, fin fans.

11 Q. Anything on the bottom level or the second level
12 in the third unit?

13 A. Bottom level is floor. That's where all of your
14 pumps -- most of the majority of all of your pieces of
15 equipment are.

16 Q. Okay. Second level in the --

17 A. There wasn't much on the second level, no, just
18 all the way up to the fin fans.

19 Q. With respect to the second level, any equipment
20 of any kind on the first, second, or third levels of the
21 second unit?

22 A. Yes.

23 Q. Each level?

24 A. Fire monitors that I had to change the oil in.

25 Q. Okay. So, is it correct that there was equipment

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1 on the first, second --

2 A. Almost every level, yes.

3 Q. Hold on a second. Let me finish.

4 Is it correct that there was equipment on
5 the first, second, and third level in the second unit?

6 A. Yes.

7 Q. And then the first unit --

8 A. Yes. There was stuff on the first, second, and I
9 can't recall about -- you know, fire monitors or -- there
10 was, I don't know, four or five fire monitors through the
11 unit, six monitors.

12 Q. But you don't recall whether there was any
13 equipment on the third level of the first unit? And
14 that's fine. I just want to make sure the record's clear.

15 You don't recall any equipment on the
16 first --

17 A. Second level, there was a mix -- a mixer that was
18 one, two -- third -- third level up on the first unit
19 there's a mixer.

20 Q. Okay.

21 A. That I had to take vibration readings on the
22 motor and the carrier.

23 Q. Okay. So, then, we've got all levels covered on
24 the first unit, correct? There's something on every level
25 in the first unit?



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1 A. Yes.

2 Q. Okay. It's all right. It's all right. It was
3 tedious. I apologize for that. I just wanted to make
4 sure that our record was clear, okay?

5 How large is this equipment that you're
6 dealing with?

7 A. Anywhere from a few inches to 30-foot long and, I
8 don't know, 10-foot high.

9 Q. Okay.

10 A. I mean, that's a wide --

11 Q. Sure.

12 A. This is a chemical plant. I mean, we've got
13 everything.

14 MR. PECKHAM: Marlene, I know you're going
15 along and it wasn't that long ago we took a break, but I
16 may need a comfort break in a few minutes whenever you
17 find a stopping point.

18 MS. WILLIAMS: Okay. We can stop. This is
19 good.

20 VIDEOGRAPHER: Going off the record. The
21 time is 12:11 p.m.

22 (Recess from 12:11 p.m. to 12:37 p.m.)

23 VIDEOGRAPHER: Now back on the record.
24 It's 12:37 p.m.

25 Q. (By Ms. Williams) Mr. King, I wanted to pick

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1 the company was evaluating your ability to return to work
2 safely?

3 A. The restrictions come, like I said, after --
4 after everything, I believe.

5 Q. Okay. But that's not my question. I'm saying
6 from the -- when you submitted the return to work form up
7 until the time that you were notified that you were
8 terminated, is it your testimony that nobody ever informed
9 you that the company was actually evaluating your ability
10 to safely return to work and whether you could do that
11 given your condition?

12 A. I think that -- no, I don't think I really was
13 notified of what was going on.

14 Q. Okay. Do you think that Equistar had a
15 responsibility to evaluate whether you could safely return
16 to work given the leave you had taken and your medical
17 condition?

18 A. Yeah, I think they had a responsibility. I mean,
19 to take, you know, some type of action.

20 Q. Okay.

21 A. I mean, I do have some type -- you know, I've got
22 renal failure. So, I guess they would have to take
23 something.

24 Q. Okay. Do you have any objection or problem with
25 the fact that Equistar actually evaluated your ability to



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1 safely return to work?

2 A. I don't think they evaluated me safely to come
3 back to work.

4 Q. Okay.

5 A. I was never evaluated. I was never -- no one did
6 an evaluation on me.

7 Q. Okay. You mean a physical evaluation?

8 A. Physical evaluation.

9 Q. Let me rephrase the question. Do you -- do you
10 think that it was appropriate for Equistar to consider
11 whether or not it was possible for you to safely return to
12 work and if --

13 A. Say that again, please.

14 Q. Do you think that it was appropriate for Equistar
15 to consider whether or not you could safely return to
16 work?

17 A. In my opinion, I guess they have a right to, yes.

18 Q. Did you think it was appropriate for them to do
19 that?

20 MR. PECKHAM: I'm going to object to form.

21 Q. (By Ms. Williams) Okay.

22 A. Like I said, every company has a right to --

23 Q. Sure. I know they could do it, but I'm asking
24 you whether or not that you think it was frankly the right
25 thing to do, for them to consider whether you could safely

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1 any of the description of your --

2 A. No, no, no.

3 Q. Let me finish -- of your work duties in this
4 particular form, do you?

5 A. No, ma'am, I do not.

6 Q. Okay. And you've already testified that it
7 accurately describes the work that you did. Right?

8 A. Yes, ma'am, as far as -- yes, ma'am, that's my
9 job tasks.

10 Q. And you made some clarifications with respect to
11 the frequency of some of the things you do. Right?

12 A. Yes, ma'am.

13 Q. Okay. Did anyone at Equistar ever deny you the
14 right to take FMLA leave at any time?

15 A. No.

16 Q. Okay. Is it your allegation in this lawsuit that
17 Equistar interfered with your rights under the Family
18 Medical Leave Act?

19 A. Say that again, please. I'm sorry.

20 Q. I don't remember it.

21 (Discussion off the record.)

22 (The record was read as requested.)

23 A. No, they didn't interfere. I think they gave me
24 my, you know, Family Leave Act.

25 Q. (By Ms. Williams) Okay.



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1 A. Yes.

2 Q. Okay. Describe for me in your own words what
3 Equistar did wrong in your opinion.

4 A. There's supposed to be a -- how do you put it?
5 Equistar is supposed to be able to -- there's supposed to
6 be a talk between the two of us and we're supposed to be
7 able to talk about, you know, my accommodations. We're
8 supposed to talk about everything for the -- the dialysis
9 and it -- it never happened. There was no -- nothing
10 between us. And I know I'm not wording that properly, but
11 since there wasn't any of that, I believe that was -- you
12 know, that was part of the discrimination.

13 Q. Okay. Do you think that -- okay. Other than
14 failing to talk to you about accommodations or about your
15 dialysis, did Equistar do anything else wrong that you
16 think was disability discrimination?

17 A. Well, I think that Equistar -- well, as far as --
18 as -- no. No, I don't think there is.

19 Q. You also allege that Equistar retaliated against
20 you. Can you describe for me what Equistar did that you
21 consider retaliation?

22 A. Well, retaliation is they -- they retaliated by
23 firing me. They fired me.

24 Q. Why did they fire you, in your opinion?

25 A. In my opinion, because I am a dialysis patient.



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1 Q. Any other retaliation?

2 A. No, I'm -- I mean, for what I know of, you know,
3 I wasn't in the background of all this. I know that
4 they -- I mean, it was just -- they fired me, ma'am,
5 because I'm a dialysis patient.

6 Q. You also allege that Equistar violated the Family
7 and Medical Leave Act. You've already testified that you
8 don't think that Equistar interfered with your ability?

9 A. Yes. I'm sorry.

10 Q. Equistar didn't interfere with your ability to
11 take FMLA leave, correct?

12 A. They did not -- what -- well, yes.

13 Q. Okay. So, what do you think Equistar did that
14 violated the Family Medical Leave Act?

15 A. They called me while I was on my Family Leave Act
16 and fired me on my Family Leave Act, while I was still on
17 family leave.

18 Q. Okay. Anything else?

19 A. No, ma'am.

20 Q. Okay.

21 MR. PECKHAM: Don't ask him how much the
22 attorneys' fees are.

23 Q. (By Ms. Williams) How much are your
24 attorneys' fees?

25 A. That's between me and Charles.



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1 whether or not you ever worked at unprotected
2 heights?

3 MS. WILLIAMS: Objection. Form.

4 A. Never.

5 Q. (By Mr. Peckham) What about -- what about
6 as -- we talked about company vehicles. What about
7 working around unguarded rotating equipment?

8 MS. WILLIAMS: Objection. Form.

9 A. No. Everything's guarded.

10 Q. (By Mr. Peckham) Okay. Do you see No. 6 on
11 that list as a restriction?

12 A. Yes.

13 Q. Can you tell me whether or not there were any
14 restrictions regarding your hours of work from Dr. Muniz
15 related to emergency response?

16 A. There was none.

17 Q. Do you -- do you have any knowledge as to whether
18 you would have -- scratch that.

19 Do you have any knowledge as to whether or
20 not Equistar would have been without emergency response
21 during the times that you were in dialysis?

22 MS. WILLIAMS: Objection. Form.

23 A. They would not.

24 Q. (By Mr. Peckham) Why not?

25 A. Because there is three -- three other vibration

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1 Q. (By Ms. Williams) Did you ever make an
2 accommodation request to anyone at Equistar?

3 A. No.

4 MS. WILLIAMS: Okay. That's all I have.
5 I'll pass.

6 FURTHER EXAMINATION

7 Q. (By Mr. Peckham) All right. Mr. King, you were
8 just asked a question about accommodation requests. Would
9 you please take a look at Exhibit No. 16? Do you see
10 that?

11 A. Yes.

12 Q. Would you please take a look at No. 5 and read
13 out loud the handwritten section?

14 A. "PT will return to work on March the 15th of
15 2010. PT will continue to do dialysis three days a week."

16 Q. Okay. Would you take a look at 5C and read the
17 handwritten section?

18 A. "Patient will need to have dialysis three days a
19 week for the rest of the patient's life or until patient
20 gets a kidney transplant."

21 Q. And can you see the date on the -- on the back
22 page of that?

23 A. Yes.

24 Q. What's the date?

25 A. 2-17th of '10.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MATTHEW KING)
)
vs.) CASE NO. 4:12-cv-00341
)
EQUISTAR CHEMICALS, L.P.,)
LYONDELLBASELL INDUSTRIES,)
N.V., a/k/a LYONDELBASEL,)
BENJAMIN FRANKLIN WITHERS,)
III, M.D., AND TAKE CARE)
HEALTH SYSTEMS)

REPORTER'S CERTIFICATE

ORAL VIDEOTAPED DEPOSITION OF MATTHEW KING

October 3, 2012

I, Shauna Foreman, Certified Shorthand Reporter
in and for the State of Texas, hereby certify to the
following:

That the witness, MATTHEW KING, was duly sworn
by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the original deposition was delivered
to Victoria Phipps.

That a copy of this certificate was served on
all parties and/or the witness shown herein on

_____.

I further certify that pursuant to FRCP Rule



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1 30(f)(1), the signature of the deponent:

2 _____ was requested by the deponent or a party
3 before the completion of the deposition and that the
4 signature is to be before any notary public and returned
5 within 30 days (or _____ days, per agreement of counsel)
6 from date of receipt of the transcript. If returned, the
7 attached Changes and Signature page contains any changes
8 and the reasons therefor;

9 _____ was not requested by the deponent or a
10 party before the completion of the deposition;

11 I further certify that I am neither counsel for,
12 related to, nor employed by any parties or attorneys in the
13 action in which this testimony is taken, and further that
14 I am not financially or otherwise interested in the outcome
15 of this action.

16 Certified to by me on this the 4th day
17 of October, 2012.

18
19 *Shauna Foreman*



20 Shauna Foreman, CSR
21 Texas CSR 3786
22 Expiration: 12/31/2012
23 Esquire Deposition Solutions
24 1001 McKinney, Suite 805
25 Houston, Texas 77002
Tel. (713)524-4600
Firm No. 03

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1 COUNTY OF HARRIS)

2 STATE OF TEXAS)

3 I hereby certify that the witness was notified
4 on _____ that the witness has 30 days (or
5 _____ days, per agreement of counsel) after being
6 notified by the officer that the transcript is available
7 for review by the witness and if there are changes in
8 the form or substance to be made, then the witness shall
9 sign a statement reciting such changes and the reasons
10 given by the witness for making them;

11 That the witness' signature was/was not
12 returned as of _____, 2012.

13 Subscribed and sworn to on this the _____
14 day of _____, 2012.

15
16
17
18 Shauna Foreman, CSR
19 Texas CSR 3786
20 Expiration: 12/31/2012
21 Esquire Deposition Solutions
22 1001 McKinney, Suite 805
23 Houston, Texas 77002
24 Tel. (713)524-4600
25 Firm No. 03



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